

REMARKS/ARGUMENTS

Claims 1 – 23 remain in this application, with Claims 1 – 20 and 22 being withdrawn from further consideration. Claims 21 and 23 stand rejected.

Favorable reconsideration is respectfully requested in view of the following remarks.

Claim 21 of the subject application has been rejected on the basis of an “obvious type” double patenting over Claim 1 of U.S. Patent 6,709,427, and has also been provisionally rejected as the “obvious type” double patenting over Claim 1 of U.S. App. S.N. 10/405,394. Accompanying this Response are two Terminal Disclaimers to obviate the double patenting rejection of Claim 21, as well as a Statement Under 37 CFR 3.73(b).

Claims 21 and 23 were also rejected as being anticipated by Unger et al. (5,244,460). In particular, the Office Action points to Col. 5, lines 22-33, of Unger et al. for allegedly teaching the concept of “a delivery instrument and a flowable agent causing the formation of lumens in the myocardium arranged to introduce particles at an entry site adjacent the cardiac tissue, generating a force external to the body to cause particles to pass through the contiguous tissue to target cardiac tissue without any mechanical means carrying said particles.”

It is respectfully submitted that such is not the case. In this regard, Unger et al. is devoid of any disclosure of the use of flowable agent comprising a plurality of small particles which pass through tissue contiguous with an entry situs to target tissue. Moreover, Unger et al. does not teach “forming a plurality of channels in the wall of the myocardium at spaced locations from one another

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and in communication with the interior of the heart." Rather, Unger et al. delivers peptides to heart tissue from a catheter inserted into heart vessels, repeatedly in a temporally spaced manner. In particular, Unger et al. delivers peptides from a catheter inserted into a coronary artery, whereupon it treats heart tissue upon delivery by blood flow and simple diffusion. There is no teaching or suggestion that the materials would be carried into and through tissue under the impetus of a particle moving force generated outside of the body.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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